

AMENDED IN ASSEMBLY MARCH 2, 2009
AMENDED IN ASSEMBLY FEBRUARY 12, 2009
AMENDED IN ASSEMBLY FEBRUARY 5, 2009
CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

House Resolution

No. 5

Introduced by Assembly Member Ammiano
(Coauthors: Assembly Members Blumenfield, Brownley, Chesbro, Coto, Eng, Evans, Feuer, Fong, Fuentes, Hayashi, Hill, Huffman, Lieu, Bonnie Lowenthal, Ma, Monning, John A. Perez, V. Manuel Perez, Portantino, Price, Ruskin, Salas, Saldana, Skinner, Solorio, Torlakson, and ~~Yamada~~ Yamada, Bass, Beall, Caballero, Charles Calderon, De La Torre, De Leon, Furutani, Jones, Mendoza, Nava, Swanson, and Torrico)

December 2, 2008

House Resolution No. 5—Relative to same-sex marriage.

1 WHEREAS, Article XVIII of the California Constitution
2 mandates distinct procedures for revision and amendment of the
3 California Constitution; and
4 WHEREAS, Article XVIII provides that, while a proposed
5 amendment to the California Constitution can be accomplished
6 through the initiative process, a proposed revision of the California
7 Constitution must originate in the Legislature and must be approved
8 by a two-thirds vote of each house of the Legislature before being
9 submitted to the electors; and
10 WHEREAS, The California Supreme Court, in *Livermore v.*
11 *Waite* (1894) 102 Cal. 113 and subsequent decisions, has held that
12 a revision is a substantial change to the “underlying principles” of

1 the California Constitution or to the structure of our “basic
2 governmental plan”; and

3 WHEREAS, Subdivision (a) of Section 8 of Article II of the
4 California Constitution defines the initiative power as the ability
5 to propose and pass statutory laws and constitutional amendments,
6 but not constitutional revisions; and

7 WHEREAS, Article III of the California Constitution establishes
8 a separation of powers between the legislative, executive, and
9 judicial branches of California’s government; and

10 WHEREAS, Under the separation of powers doctrine established
11 by Article III of the California Constitution, the courts have the
12 ultimate authority to interpret and enforce the principle of equal
13 protection, particularly where government discrimination on a
14 suspect basis or the selective denial of a fundamental, inalienable
15 right on a suspect basis is at issue; and

16 WHEREAS, The distinct procedures mandated for revision and
17 amendment of the California Constitution, and the crucial
18 deliberative role of the Legislature in any proposed revision of our
19 Constitution, constitute key structural checks in the system of
20 checks and balances mandated by Article III of the California
21 Constitution; and

22 WHEREAS, The distinction between revision and amendment,
23 and the distinct procedures assigned to each, in Article XVIII of
24 the California Constitution, as well as the separation of powers
25 mandated by Article III, are entitled to the highest respect as the
26 expression of the people’s will; and

27 WHEREAS, The principle of equal protection, which prohibits
28 unequal government treatment of historically targeted minority
29 groups and ensures that laws enacted by a majority must apply
30 equally to all people, is a foundational principle underlying our
31 Constitution and our democratic system of government; and

32 WHEREAS, The requirement of equal protection of the laws
33 plays an essential structural role in our basic governmental plan
34 by providing a necessary check on the exercise of majority power
35 and, in particular, by prohibiting the enactment of measures that
36 facially single out a historically targeted minority group for adverse
37 treatment and selective exclusion from an important right; and

38 WHEREAS, The Legislature is specially suited to examine and
39 debate significant changes to the principles and structure that

1 underlie the California Constitution, and is structured for precisely
2 such a task; and

3 WHEREAS, Proposition 8, which was titled “Eliminates the
4 right of same-sex couples to marry,” was put forward as an
5 initiative measure and enacted by the electors by a bare majority
6 of the vote in the November 4, 2008 general election; and

7 WHEREAS, Proposition 8 purports to amend the California
8 Constitution to eliminate a fundamental, inalienable right only for
9 a particular minority group on the basis of a suspect classification,
10 while permitting the majority to retain that fundamental, inalienable
11 right; and

12 WHEREAS, Proposition 8 would severely undermine the
13 foundational principle of equal protection by establishing that any
14 disfavored minority can be targeted to have its fundamental,
15 inalienable rights stripped away by a simple majority vote; and

16 WHEREAS, Proposition 8 would substantially alter our basic
17 governmental plan by eliminating equal protection as a structural
18 check on the exercise of majority power and by permitting
19 majorities to force groups defined by suspect classifications to
20 fight to protect their fundamental, inalienable rights under the
21 California Constitution at every election; and

22 WHEREAS, Proposition 8 would violate the separation of
23 powers doctrine by stripping the courts of their core,
24 constitutionally mandated function and traditional authority to
25 enforce equal protection to prevent government discrimination
26 against minority groups and the selective denial of fundamental,
27 inalienable rights on suspect bases; and

28 WHEREAS, Proposition 8 would also violate the separation of
29 powers doctrine by intruding on the vital role of the Legislature
30 in vetting revisions to the California Constitution and by
31 sidestepping the constitutionally required rigors of the legislative
32 process; now, therefore, be it

33 *Resolved by the Assembly of the State of California, That the*
34 *Assembly opposes Proposition 8 because it is an improper revision,*
35 *not an amendment, of the California Constitution and was not*
36 *enacted according to the procedures required by Article XVIII of*
37 *the California Constitution; and be it further*

- 1 *Resolved*, That the Chief Clerk of the Assembly transmit copies
- 2 of this resolution to the author for appropriate distribution.

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